



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/ [REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 23, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance, a hearing was held on February 05, 2015, at Sheboygan, Wisconsin.

Notes:

This case was originally categorized as an FCP (Family Care Hearing). However, as the hearing progressed, it became clear that this was really an MGE (Medicaid General Eligibility) issue. As such, the case number was changed to MGE- [REDACTED]

The record was held open to give the Sheboygan County Department of Human Services (the agency) an opportunity to supplement the record. The agency provided Case Comments and notices dated July 14, 2014 and August 19, 2014, two notices dated August 28, 2014, in addition to notices dated December 23, 2014 and December 24, 2014. The documents have been marked Exhibits 4-10.

The record was also held open to allow the Petitioner's guardian to submit a copy of the letters of guardianship. They have been marked as Exhibit 3 and entered into the record.

The issue for determination is whether Sheboygan County Department of Human Services correctly denied Petitioner's request to backdate his benefits to September 1, 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Timothy Gessier, Economic Support Manager  
Sheboygan County Department of Human Services  
3620 Wilgus Ave  
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. On July 14, 2014, the agency sent the Petitioner, in care of his attorney, a notice indicating that he needed to complete a Medicaid renewal by August 31, 2014, if he wished to continue receiving benefits. (Exhibit 5)
3. On July 29, 2014, the Petitioner's guardian contacted the agency regarding the review/renewal and asked for the form. (Exhibit 4)
4. On August 19, 2014, the agency sent the Petitioner, in care of his attorney, a notice indicating that his benefits would be ending effective September 1, 2014, because his renewal had not been completed. The notice further stated that if the Petitioner wanted to continue receiving benefits, he needed to contact the agency before the end of the month. (Exhibit 6)
5. On August 26, 2014, the Petitioner's guardian contacted the agency to make sure they received all the paperwork that she submitted for the renewal. The agency confirmed receipt of her documents. (Exhibit 4)
6. On August 28, 2014, the agency sent the Petitioner, in care of his guardian and in care of his attorney, a notice indicating that his Medicaid benefits would be ending effective September 1, 2014, because he was over the asset limit. (Exhibits 7 and 8)
7. On August 29, 2014, the Petitioner's guardian called the agency to inquire about the termination of Petitioner's benefits and was informed that there was an insurance policy that put the Petitioner over the income limit. The Petitioner's guardian indicated that the insurance policy was intended to cover burial expenses and the agency instructed her to get documentation of that assignment. (Exhibit 4)
8. The agency has no documentation showing that it sent a verification request to Petitioner's guardian. (Testimony of [REDACTED])
9. The Petitioner's guardian contacted the agency on September 25, 2014, to advise the agency that the life insurance policy was now specifically assigned for burial proposes and was told she needed to provide verification before the end of the month to reopen the Petitioner's case without a gap in coverage. (Exhibit 4)
10. Petitioner's guardian provided documentation on September 26, 2014, but the agency determined that it was not sufficient, because it did not bear the signature of a representative of the insurance company. There is no indication the agency notified Petitioner's guardian of this problem. (Exhibit 4)
11. After experiencing much difficulty with the life insurance company, the Petitioner was able to obtain the needed verification on October 6, 2014. (Testimony of Petitioner's guardian; Exhibit 2, pg. 6)
12. On November 24, 2014, the Petitioner's guardian called the agency again to inquire about the Petitioner's benefits and was told at that time, that she needed better verification. (Exhibit 4)

13. On December 19, 2014, the Petitioner's guardian submitted a new application for Family Care benefits. (Exhibit 4)
14. On December 24, 2014, the agency sent the Petitioner a notice, in care of his guardian, indicating that as of December 23, 2014, he would be enrolled in Community Waivers. (Exhibit 10)
15. The Petitioner filed a hearing request that was received by the Division of Hearings and Appeals on December 23, 2014. (Exhibit 1)

### **DISCUSSION**

Petitioner filed a request for fair hearing because he wants his benefits backdated to September 1, 2014. It is the agency's contention that it is bound by the ADRC's determination of Petitioner's eligibility start date and that it cannot backdate the Petitioner's benefits.

However, Medicaid Eligibility Handbook §29.5.3 does, in fact, permit backdating in circumstances like the Petitioners:

Family Care enrollees who lose Medicaid eligibility, reapply and again are found eligible for Medicaid may be re-enrolled in Family Care for up to three calendar months, prior to the Medicaid application month if all of the following conditions are met:

1. The person (or his representative) requests backdated Medicaid
2. The person is determined to have met Medicaid financial and non-financial requirements for the month(s) being considered for re-enrollment in Family Care
3. The person is determined to have been functionally eligible for Family Care in the month(s) being considered for re-enrollment in Family Care.
4. The person is determined to have received services, in addition to care management, under the Family Care (MCO) plan of care during the month(s) being considered for re-enrollment in Family Care."

The local income maintenance (IM) agency is not authorized to re-enroll anyone in Family Care earlier than the first of the month, three months prior to the application month.

In the case at hand, it is clear that the Petitioner wants backdated benefits. It is also clear that Petitioner received services other than care management, because he lives in an Adult Family Home and has accrued charges for September, October, November and December 2014. However, the remaining two criteria will need to be re-evaluated by the agency.

If the Petitioner disagrees with the agency's determination, his guardian will have to file a new appeal.

### **CONCLUSIONS OF LAW**

The agency incorrectly denied the Petitioner's request to backdate his Family Care benefits to September 1, 2014.

**THEREFORE, it is**

**ORDERED**

That the agency evaluate the Petitioner's case to see if he meets the two remaining criteria (financial and non-financial eligibility; and functional eligibility) for backdating his December application for benefits to September 2014. The agency shall send the Petitioner's guardian written notice of its determination. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 23rd day of February, 2015.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 23, 2015.

Sheboygan County Department of Human Services  
Office of Family Care Expansion